



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Utah State Office

440 West 200 South, Suite 500

Salt Lake City, UT 84101-1345

<http://www.blm.gov/ut/st/en.html>



IN REPLY REFER TO:

3432

UTU-06039

UTU-88554

(UT-9223)

APR 19 2013

*Carolan
4/12/13
w/Day
4/15/13
S. Decker
4/18/13
Bunker
4/19/13*

CERTIFIED MAIL – 7012 3460 0001 4633 6141

Return Receipt Requested

DECISION

PacifiCorp	:	Coal Leases
c/o Interwest Mining Company	:	UTU-06039
1407 W. North Temple, Suite 310	:	UTU-88554
Salt Lake City, UT 84116	:	

Evidence Required

An application for a modification of coal leases UTU-06039 and UTU-88554 were filed in this office on November 29, 2011. The proposed lease modifications include the following described lands located in Emery County, Utah:

UTU-06039:

T. 16 S., R. 6 E., SLM
Sec. 24, S½.

Containing 320.00 acres

UTU-88554:

T. 16 S., R. 6 E., SLM
Sec. 22, SE¼SE¼;
Sec. 23, S½S½;
Sec. 25, W½W½NW¼, W½NW¼SW¼;
Sec. 26, N½, N½S½;
Sec. 27, E½NE¼ NE¼SE¼.

Containing 860.00 acres
Emery County

It has been determined that the proposed modifications meet the requirements of the regulations under 43 CFR 3432.3 and that it would serve the interests of the United States to modify these leases under Sec. 3 of the Mineral Leasing Act of February 25, 1920, as amended. Accordingly, prior to the execution of the modified leases, the enclosed lease forms and stipulations must be accepted, signed, dated and returned to this office accompanied by the following:

1. Rental in the amount of \$3,540.00 is now due. The additional yearly rental on the modified areas at a rate of \$3.00 per acre is:

UTU-06039:

\$960.00 for the additional area and a total of \$5,517.00 for each anniversary date thereafter.

UTU-88554:

\$2,580.00 for the additional area and a total of \$19,149.00 for each anniversary date thereafter.

2. PacifiCorp currently has on file a Logical Mining Unit (LMU) surety bond with Travelers Casualty and Surety Company of America, as surety, in the amount of \$2,100,000 that includes coverage of coal leases UTU-06039 and UTU-88554. A signed statement from the surety that the bond covering this LMU will cover the additional modification acreage added to these leases. A modification to the East Mountain LMU should be filed after approval of this modification, to add the additional acreage to the LMU.
3. A partial bonus payment required by 43 CFR 3432.2(c) in the amount of \$200,000.00 for lease modification UTU-88554.

A period of thirty (30) days from the receipt of this decision is allowed in which to accept the modified lease forms and to submit the evidence required. If no action is taken within the time allowed, these cases will be closed as to the applications for modification.

During the compliance period there is no right of appeal to the Interior Board of Land Appeals and an appeal filed within the compliance period is subject to dismissal as being premature. The 30-day appeal period commences upon expiration of the 30-day compliance period.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4, and the enclosed Form 1842.1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition (pursuant to regulation 43 CFR 4.21)(58 FR 4939, January 19, 1993) (request) for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay **must** also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed in this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

If you have further questions, call Bill Buge of this office at (801) 539-4086.

Kent Hoffman

Kent Hoffman
Deputy State Director,
Division of Lands and Minerals

Enclosures:

1. Form 1842.1
2. 2 Modified Leases (9 pp.)

cc: Price Coal Office (UTG021)

Travelers Casualty and Surety Company of America, One Tower Square, Hartford, Connecticut
06183-6014

bcc: UT-920 Reading File
UT-950 Central Files

BBuge Date: 04/12/2013

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Serial No. UTU-06039

MODIFIED COAL LEASE

Date of Lease May 1, 1953

PART I.

JUN 01 2013

THIS MODIFIED COAL LEASE is entered into on _____, by and between the **UNITED STATES OF AMERICA**, hereinafter called the Lessor, through the Bureau of Land Management, and
PacifiCorp
c/o Interwest Mining Company
1407 West North Temple, Suite 310
Salt Lake City, UT 84116

hereinafter called Lessee.

This modified lease shall retain the effective date of May 1, 1953, of the original **COAL LEASE UTU- 06039**, and is effective for a period of 10 years from the date of the last lease readjustment, dated May 1, 2013 and for so long thereafter as coal is produced in commercial quantities from the leased lands, subject to readjustment of lease terms at the end of each 10 year lease period thereafter.

Sec. 1. This lease is issued pursuant and subject to the terms and provisions of the: (NOTE: Check the appropriate Act or Acts.)

XX Mineral Lands Leasing Act of 1920, as amended, 41 Stat. 437, 30 U.S.C. 181-287, hereinafter referred to as the Act;

 Mineral Leasing Act for Acquired Lands of 1947, 61 Stat. 913, 30 U.S.C. 351-359;

and to the regulations and formal orders of the Secretary of the Interior which are now or hereafter in force, when not inconsistent with the express and specific provisions herein.

Sec. 2. Lessee as the holder of Coal Lease UTU- 06039, issued effective May 1, 1953, was granted the exclusive right and privilege to drill for, mine, extract, remove or otherwise process and dispose of the coal deposits in, upon, or under the lands described below as Tract 1 and Tract 2.

The Lessor in consideration of fair market value, rents and royalties to be paid, and the conditions and covenants to be observed as herein set forth, hereby grants and leases to Lessee the exclusive right and privilege to drill for, mine, extract, remove, or otherwise process and dispose of the coal deposits in, upon, or under the lands described below as Tract 3.

Tract 1:

T. 16 S., R. 6 E., SLM, Utah
Sec. 25, E $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$;

T. 16 S. R. 7 E., SLM, Utah

sec. 19, SE $\frac{1}{4}$;

Sec. 20, S $\frac{1}{2}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$;

Sec. 29, N $\frac{1}{2}$, SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 30, lot 4, E $\frac{1}{2}$.

Tract 2:

T. 16 S., R. 7 E., SLM, Utah
Sec. 19, lots 2, 3, W $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$;

Tract 3:

T. 16 S., R. 6 E., SLM, Utah
Sec. 24, S $\frac{1}{2}$.

Emery County, Utah

containing 1,838.67 acres, more or less, together with the right to construct such works, buildings, plants, structures, equipment and appliances and the right to use such on-lease rights-of-way which may be necessary and

convenient in the exercise of rights and privileges granted, subject to the conditions herein provided.

Part II. TERMS AND CONDITIONS

an LMU or part of an LMU, subject to the provisions set forth in the regulations.

Sec. 1.(a) RENTAL RATE - Lessee shall pay Lessor rental annually and in advance for each acre or fraction thereof during the continuance of the lease at the rate of \$3.00 per acre for each lease year.

(b) RENTAL CREDITS - Rental shall not be credited against either production or advance royalties for any year.

Sec. 2.(a) PRODUCTION ROYALTIES - The royalty shall be 8 percent of the value of the coal as set forth in the regulations. Royalties are due to Lessor the final day of the month succeeding the calendar month in which the royalty obligation accrues.

(b) ADVANCE ROYALTIES - Upon request by the Lessee, the authorized officer may accept, for a total of not more than 20* years, the payment of advance royalties in lieu of continued operation, consistent with the regulations. The advance royalty shall be based on a percent of the value of a minimum number of tons determined in the manner established by the advance royalty regulations in effect at the time the Lessee requests approval to pay advance royalties in lieu of continued operation.

* 20 years (Public Law 109-58)

Sec. 3. BONDS - Lessee shall maintain in the proper office a Logical Mining Unit bond in the amount of \$2,100,000. The authorized officer may require an increase in this amount when additional coverage is determined appropriate.

Sec. 4. DILIGENCE - This lease has not achieved diligent development however is held by inclusion in the East Mountain LMU. The lease is subject to the conditions of continued operations under the LMU. Continued operation may be excused when operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the Lessee. The Lessor, in the public interest, may suspend the condition of continued operation upon payment of advance royalties in accordance with the regulations in existence at the time of the suspension.

The Lessor reserves the power to assent to or order the suspension of the terms and conditions of this lease in accordance with, inter alia, Section 39 of the Mineral Leasing Act, 30 U.S.C. 209.

Sec. 5. LOGICAL MINING UNIT (LMU) - Either upon approval by the Lessor of the Lessee's application or at the direction of the Lessor, this lease shall become

The stipulations established in an LMU approval in effect at the time of LMU approval or modification will supersede the relevant inconsistent terms of this lease so long as the lease remains committed to the LMU. If the LMU of which this lease is a part is dissolved, the lease shall then be subject to the lease terms which would have been applied if the lease had not been included in an LMU.

This lease was placed in the East Mountain LMU effective December 23, 1986.

Sec. 6. DOCUMENTS, EVIDENCE AND INSPECTION - At such times and in such form as Lessor may prescribe, Lessee shall furnish detailed statements showing the amounts and quality of all products removed and sold from the lease, the proceeds therefrom, and the amount used for production purposes or unavoidably lost.

Lessee shall keep open at all reasonable times for the inspection of any duly authorized officer of Lessor, the leased premises and all surface and underground improvements, works, machinery, ore stockpiles, equipment, and all books, accounts, maps, and records relative to operations, surveys, or investigations on or under the leased lands.

Lessee shall allow Lessor access to and copying of documents reasonably necessary to verify Lessee compliance with terms and conditions of the lease.

While this lease remains in effect, information obtained under this section shall be closed to inspection by the public in accordance with the Freedom of Information Action (5 U.S.C. 552).

Sec. 7. DAMAGES TO PROPERTY AND CONDUCT OF OPERATIONS - Lessee shall comply at its own expense with all reasonable orders of the Secretary, respecting diligent operations, prevention of waste, and protection of other resources.

Lessee shall not conduct exploration operations, other than casual use, without an approved exploration plan. All exploration plans prior to the commencement of mining operations within an approved mining permit area shall be submitted to the authorized officer.

Lessee shall carry on all operations in accordance with approved methods and practices as provided in the operating regulations, having due regard for the prevention of injury to life, health, or property, and prevention of waste, damage or degradation any land,

air, water, cultural, biological, visual, and other resources, including mineral deposits and formations of mineral deposits not leased hereunder, and to other land uses or users. Lessee shall take measures deemed necessary by Lessor to accomplish the intent of this lease term. Such measures may include, but not limited to, modification to proposed siting or design of facilities, timing of operations, and specifications of interim and final reclamation procedures. Lessor reserves to itself the right to lease, sell, or otherwise dispose of the surface or other mineral deposits in the lands and the right to continue existing uses and to authorize future uses upon or in the leased lands, including issuing leases for mineral deposits not covered hereunder and approving easements or rights-of-way. Lessor shall condition such uses to prevent unnecessary or unreasonable interference with rights of Lessee as may be consistent with concepts of multiple use and multiple mineral development.

Sec. 8 PROTECTION OF DIVERSE INTERESTS, AND EQUAL OPPORTUNITY - Lessee shall: pay when due all taxes legally assessed and levied under the laws of the State or the United States; accord all employees complete freedom of purchase; pay all wages at least twice each month in lawful money of the United States; maintain a safe working environment in accordance with standard industry practices; restrict the workday to not more than 8 hours in any one day for underground workers, except in emergencies; and take measures necessary to protect the health and safety of the public. No person under the age of 16 years shall be employed in any mine below the surface. To the extent that laws of the State in which the lands are situated are more restrictive than the provisions in this paragraph, then the State laws apply.

Lessee will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended, and the rules, regulations, and relevant orders of the Secretary of Labor. Neither Lessee nor Lessee's subcontractors shall maintain segregated facilities.

Sec. 9.(a) TRANSFERS
(Check the appropriate space)

☒ This lease may be transferred in whole or in part to any person, association or corporation qualified to hold such lease interest.

☐ This lease may be transferred in whole or in part to another public body, or to a person who will mine the coal on behalf of, and for the use of, the public body or to a person who for the

limited purpose of creating a security interest in favor of a lender agrees to be obligated to mine the coal on behalf of the public body.

☐ This lease may only be transferred in whole or in part to another small business qualified under 13 CFR 121.

Transfers of record title, working or royalty interest must be approved in accordance with the regulations.

(b) **RELINQUISHMENTS** - The Lessee may relinquish in writing at any time all rights under this lease or any portion thereof as provided in the regulations. Upon Lessor's acceptance of the relinquishment, Lessee shall be relieved of all future obligations under the lease or the relinquished portion thereof, whichever is applicable.

Sec. 10. DELIVERY OF PREMISES, REMOVAL OF MACHINERY, EQUIPMENT, ETC. - At such times as all portions of this lease are returned to Lessor, Lessee shall deliver up to Lessor the land leased, underground timbering, and such other supports and structures necessary for the preservation of the mine workings on the leased premises or deposits and place all workings in condition for suspension or abandonment. Within 180 days thereof, Lessee shall remove from the premises all other structures, machinery, equipment, tools, and materials that it elects to or as required by the authorized officer. Any such structures, machinery, equipment, tools, and materials remaining on the leased lands beyond 180 days, or approved extension thereof, shall become the property of the Lessor, but Lessee shall either remove any or all such property or shall continue to be liable for the cost of removal and disposal in the amount actually incurred by the Lessor. If the surface is owned by third parties, Lessor shall waive the requirement for removal, provided the third parties do not object to such waiver. Lessee shall, prior to the termination of bond liability or at any other time when required and in accordance with all applicable laws and regulations, reclaim all lands the surface of which has been disturbed, dispose of all debris or solid waste, repair the offsite and onsite damage caused by Lessee's activity or activities incidental thereto, and reclaim access roads or trails.

Sec. 11. PROCEEDINGS IN CASE OF DEFAULT - If Lessee fails to comply with applicable laws, existing regulations, or the terms, conditions and stipulations of this lease, and the noncompliance continues for 30 days after written notice thereof, this lease shall be subject to cancellation by the Lessor only by judicial proceedings. This provision shall not be construed to prevent the exercise by Lessor of any other legal and

equitable remedy, including waiver of the default. Any such remedy or waiver shall not prevent later cancellation for the same default occurring at any other time.

Sec. 12. **HEIRS AND SUCCESSORS - INTEREST** - Each obligation of this lease shall extend to and be binding upon, and every benefit hereof shall inure to, the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

Sec. 13. **INDEMNIFICATION** - Lessee shall indemnify and hold harmless the United States from any and all claims arising out of the Lessee's activities and operations under this lease.

Sec. 14. **SPECIAL STATUTES** - This lease is subject to the Federal Water Pollution Control Act (33 U.S.C. 1151 - 1175); the Clean Air Act (42 U.S.C. 1857 et seq.), and to all other applicable laws pertaining to exploration activities, mining operations and reclamation, including the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.)

Sec. 15. **SPECIAL STIPULATIONS** -

SEE ATTACHED STIPULATIONS

PacifiCorp

Company or Lessee Name

(Signature of Lessee)

Cindy A. Crane, Vice President

(Title)

MAY 16, 2013

(Date)

The United States of America

BY

Kent Hoffman

(Signing Officer)

DSD LANDS AND MINERALS

(Title)

JUN 03 2013

(Date)

Title 18 U.S.C. Section 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

**SPECIAL STIPULATIONS FOR UTU-063039
MODIFIED COAL LEASE**

1. The Regulatory Authority shall mean the State Regulatory Authority pursuant to a cooperative agreement approved under 30 CFR Part 745 or in the absence of a cooperative agreement, Office of Surface Mining. The authorized officer (AO) shall mean the State Director, Bureau of Land Management. The AO of the Surface Management Agency shall mean the Forest Supervisor, Forest Service. Surface Management Agency for private surface is the Bureau of Land Management. For adjoining private lands with Federal minerals and which primarily involve National Forest Service issues, the Forest Service will have the lead for environmental analysis and when necessary, documentation in an environmental analysis and, when necessary, documentation in an environmental assessment or environmental impact statement.

2. The AO, of the Bureau of Land Management, Office of Surface Mining (Regulatory Authority) and the Surface Management Agency (Forest Service) respectively, shall coordinate, as practical, regulation of mining operations and associated activities on the lease area.

3. In accordance with Sec. 523 (b) of the "Surface Mining Control and Reclamation Act of 1977," surface mining and reclamation operations conducted on this lease are to conform with the requirements of this Act and are subject to compliance with the Office of Surface Mining Regulations, or as applicable, a Utah program equivalent approved under cooperative agreement in accordance with Sec. 523(c). the United States Government does not warrant that the entire tract will be susceptible to mining.

4. Federal Regulations 43 CFR 3400 pertaining to Coal Management make provisions for the Surface Management Agency, the surface of which is under the jurisdiction of any Federal agency other than the Department of Interior, to consent to leasing and to prescribe conditions to insure the use and protection of the lands. All or part of this lease contains lands the surface of which are managed by the United States Department of Agriculture, Forest Service, Fishlake National Forest.

The following stipulations pertain to the Lessee responsibility for mining operations on the lease area and on adjacent areas as may be specifically designated on National Forest System lands.

5. Before undertaking activities that may disturb the surface of previously undisturbed leased lands, the lessee may be required to conduct a cultural resource inventory and a paleontological appraisal of the areas to be disturbed. These studies shall be conducted by qualified professional cultural resource specialists or qualified paleontologists, as appropriate, and a report prepared itemizing the findings. A plan will then be submitted making recommendations for the protection of, or measures to be taken to mitigate impacts for identified cultural or paleontological resources.

If cultural resources or paleontological remains (fossils) of significant scientific interest are discovered during operations under this lease, the lessee prior to disturbance shall, immediately bring them to the attention of the appropriate authorities. Paleontological remains of significant scientific interest do not include leaves, ferns, or dinosaur tracks commonly encountered during underground mining operations.

The cost of conducting the inventory, preparing reports, and carrying out mitigating measures shall be borne by the lessee.

6. If there is reason to believe that Threatened or Endangered (T&E) species of plants or animals, or migratory bird species of high Federal interest occur in the area, the Lessee shall be required to conduct an intensive field inventory of the area to be disturbed and/or impacted. The inventory shall be conducted by a qualified specialist and a report of findings will be prepared. A plan will be prepared making recommendations for the protection of these species or action necessary to mitigate the disturbance.

The cost of conducting the inventory, preparing reports, and carrying out mitigating measures shall be borne by the lessee.

7. The Lessee shall be required to perform a study to secure adequate baseline data to quantify the existing surface resources on and adjacent to the lease area. Existing data may be used if such data are adequate for the intended purposes. The study shall be adequate to locate, quantify, and demonstrate the interrelationship of the geology, topography, surface and ground water hydrology, vegetation and wildlife. Baseline data will be established so that future programs of observation can be incorporated at regular intervals for comparison.

8. Powerlines used in conjunction with the mining of coal from this lease shall be constructed so as to provide adequate protection for raptors and other large birds. When feasible, powerlines will be located at least 100 yards from public roads.
9. The limited area available for mine facilities at the coal outcrop, steep topography, adverse winter weather, and physical limitations on the size and design of the access road, are factors which will determine the ultimate size of the surface area utilized for the mine. A site specific environmental analysis will be prepared for each new mine site development and for major modifications to existing developments to examine alternatives and mitigate conflicts.
10. Consideration will be given to site selection to reduce adverse visual impacts. Where alternative sites are available, and each alternative is technically feasible, the alternative involving the least damage to the scenery and other resources shall be selected. Permanent structures and facilities will be designed, and screening techniques employed, to reduce visual impacts, and where possible achieve a final landscape compatible with the natural surroundings. The creation of unusual, objectionable, or unnatural land forms and vegetative landscape features will be avoided.
11. The Lessee shall be required to establish a monitoring system to locate, measure, and quantify the progressive and final effects of underground mining activities on the topographic surface, underground and surface hydrology and vegetation. The monitoring system shall utilize techniques which will provide a continuing record of change over time and an analytical method for location and measurement of a number of points over the lease area. The monitoring shall incorporate and be an extension of the baseline data.
12. The lessee shall provide for the suppression and control of fugitive dust on haul roads and at coal handling and storage facilities. On Forest Development Roads (FDR), lessees may perform their share of road maintenance by a commensurate share agreement if a significant degree of traffic is generated that is not related to their activities.
13. Except at specifically approved locations, underground mining operations shall be conducted in such a manner so as to prevent surface subsidence that would: (1) cause the creation of hazardous conditions such as potential escarpment failure and landslides, (2) cause damage to existing surface structures, and (3) damage or alter the flow of perennial streams. The lessee shall provide specific measures for the protection of escarpments, and determine corrective measures to assure that hazardous conditions are not created.
14. In order to avoid surface disturbance on steep canyon slopes and to preclude the need for surface access, all surface breakouts for ventilation tunnels shall be constructed from inside the mine, except at specifically approved locations.
15. If removal of timber is required for clearing of construction sites, etc., such timber shall be removed in accordance with the regulations of the surface management agency.
16. The coal contained within, and authorized for mining under this lease, shall be extracted only by underground mining methods.
17. Existing Forest Service owned or permitted surface improvements will need to be protected, restored, or replaced to provide for the continuance of current land uses.
18. In order to protect big game wintering areas, elk calving and deer fawning areas, sagegrouse strutting areas, and other critical wildlife habitat and/or activities, specific surface uses outside the mine development area may be curtailed during specific periods of the year.
19. Support facilities, structures, equipment, and similar developments will be removed from the lease area within 2 years after the final termination of use of such facilities. This provision shall apply unless the requirement of Section 10 of the lease form is applicable. Disturbed areas and those areas previously occupied by such facilities will be stabilized and rehabilitated, drainages reestablished, and the areas returned to a premining land use.
20. The Lessee at the conclusion of the mining operation, or at other times as surface disturbance related to mining may occur, will replace all damaged, disturbed, or displaced corner monuments (section corners, quarter corners, etc.) their accessories and appendages (witness trees, bearing trees, etc.), or restore them to their original condition and location, or at other locations that meet the requirements of the rectangular surveying system. This work shall be conducted at the expense of the Lessee, by BLM to the standards and guidelines found in the Manual of Surveying Instructions, U.S. Department of Interior.
21. The Lessee, at his expense, will be responsible to replace any surface and/or developed ground water sources identified for

protection, that may be lost or adversely affected by mining operations, with water from an alternate source in sufficient quantity and quality to maintain existing riparian habitat, fishery habitat, livestock and wildlife use, or other land uses (authorized by 36 CFR 251).

22. The Licensee/Permittee/Lessee must comply with all the rules and regulations of the Secretary of Agriculture set forth at Title 36, Chapter II, of the Code of Federal Regulations governing the use and management of the National Forest System (NFS) when not inconsistent with the rights granted by the Secretary of the Interior in the license/permit/lease. The Secretary of Agriculture's rules and regulations must be complied with for (1) all use and occupancy of the NFS prior to approval of a permit/operation plan by the Secretary of Interior, (2) uses of all existing improvements, such as Forest Development Roads, within and outside the area licensed, permitted or leased by the Secretary of Interior, and (3) use and occupancy of the NFS not authorized by a permit/operation plan approved by the Secretary of the Interior.

All matters related to this stipulation are to be addressed to:

Forest Supervisor
Manti LaSal National Forest
599 West Price River Drive
Price, Utah 84501

Telephone No.: 435-637-2817

who is the authorized representative of the Secretary of Agriculture.

23. Notwithstanding the approval of a resource recovery and protection plan by the BLM, lessor reserves the right to seek damages against the operator/lessee in the event (i) the operator/lessee fails to achieve maximum economic recovery [as defined at 43 CFR §3480.0-5(21)] of the recoverable coal reserves or (ii) the operator/lessee is determined to have caused a wasting of recoverable coal reserves. Damages shall be measured on the basis of the royalty that would have been payable on the wasted or unrecovered coal.

The parties recognize that under an approved R2P2, conditions may require a modification by the operator/lessee of that plan. In the event a coal bed or portion thereof is not to be mined or is rendered unminable by the operation, the operator shall submit appropriate justification to obtain approval by the AO to leave such reserves unmined. Upon approval by the AO, such coal beds or portions thereof shall not be subject to damages as described above. Further, nothing in this section shall prevent the operator/lessee from exercising its right to relinquish all or a portion of the lease as authorized by statute and regulation.

In the event the AO determines that the R2P2 modification will not attain MER resulting from changed conditions, the AO will give proper notice to the operator/lessee as required under applicable regulations. The AO will order a new R2P2 modification if necessary, identifying additional reserves to be mined in order to attain MER. Upon a final administrative or judicial ruling upholding such an ordered modification, any reserves left unmined (wasted) under that plan will be subject to damages as described in the first paragraph under this section.

Subject to the right to appeal hereinafter set forth, payment of the value of the royalty on such unmined recoverable coal reserves shall become due and payable upon determination by the AO that the coal reserves have been rendered unminable or at such time that the lessee has demonstrated an unwillingness to extract the coal.

The BLM may enforce this provision either by issuing a written decision requiring payment of the MMS demand for such royalties, or by issuing a notice of non-compliance. A decision or notice of non-compliance issued by the lessor that payment is due under this stipulation is appealable as allowed by law.

24. **WASTE CERTIFICATION:** The Lessee shall provide upon abandonment, transfer of operation, assignment of rights, sealing off a mined area and prior to lease relinquishment, certification to the lessor that, based upon a complete search of all the records for the lease and its associated mine operation(s), and upon Lessee's and the operator's knowledge of past mining operations associated with the lease, there has been no reportable quantities of **hazardous substances** per (40 CFR 302.4) or **used oil** [as per Utah State Management Rule R-315-15], discharged, deposited or released within the lease, either on the surface or underground, and that all remedial actions necessary have been taken to protect human health and the environment with respect to any such substances. Lessee must additionally provide to the Lessor a complete list of all hazardous substances and hazardous materials and their Chemical Abstract Registry Numbers, and the oil and petroleum products used or stored on, or delivered to, the lease. Such disclosure will be in addition to any other disclosure required by law or agreement.

25. **UNDERGROUND INSPECTION:** All safe and accessible areas shall be inspected prior to being sealed. The lessee shall notify the Authorized Officer in writing 30 days prior to the sealing of any areas in the mine and state the reason for closure. Prior to seals being put into place, the lessee shall inspect the area and document any equipment/machinery, hazardous substances, and used oil that is to be left underground. The AO may participate in this inspection.

The purpose of this inspection will be: (1) to provide documentation for compliance with 42 U.S.C. 9620 section 120(h) and Utah State Management Rule R-315-15, and to assure that certification will be meaningful at the time of lease relinquishment, (2) to document the inspection with a mine map showing location of equipment/machinery (model, type of fluid, amount remaining, batteries etc.) that is proposed to be left underground. In addition, these items will be photographed at the Lessee's expense and shall be submitted to the Authorized Officer as part of the certification. The abandonment of any equipment/machinery shall be on a case by case basis and shall not be accomplished unless the Authorized Officer has granted a written approval. Any on-lease disposal of non-coal waste must comply with 30 CFR §817.89.

26. **FAIR MARKET VALUE BONUS:** Pursuant to 43 CFR 3432.2(c), "the lands applied for shall be added to the existing lease without competitive bidding, but the United States shall receive the fair market value of the lease of the added lands, either by cash payment or adjustment of the royalty applicable to the lands added to the lease by the modification." Therefore, the lessee will pay the fair market value (FMV) bonus payment for the coal resources mined in the area of Federal coal lease modification (U-06039) Tract 3, the bonus payment will be due for the coal resources mined on the areas comprised of Federal coal lease modification acreage added at a rate of \$.40 per ton for the actual tonnage mined. This rate may be adjusted annually using the U. S. Bureau of Labor Statistics CPI West Urban Energy Index; or if that index is not available an index that is mutually agreed to by the lessee and the authorized officer will be used. Payment of this part of the FMV at the specified rate and tonnage mined will be on the schedule required for payment of production royalties to the Office of Natural Resources Revenue (ONRR). The lessee will clearly indicate which portion of the payment is for royalty and what is for the lease bonus payment.